

Introduced by Senator Ackerman

January 31, 2005

An act to amend Section 186.22 of the Penal Code, relating to gangs.

LEGISLATIVE COUNSEL'S DIGEST

SB 128, as introduced, Ackerman. Gangs.

Existing law, as amended by initiative, provides that, any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or 2 or 3 years. Existing law also defines "pattern of criminal gang activity" to mean the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of 2 or more of the certain offenses, as specified. Existing law also authorizes the Legislature to amend these provisions with a 2/3 vote of each house of the Legislature.

This bill would add several offenses relating to theft of access cards and personal information to the list of offenses qualifying for a pattern of criminal gang activity.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 186.22 of the Penal Code is amended to
2 read:

3 186.22. (a) Any person who actively participates in any
4 criminal street gang with knowledge that its members engage in
5 or have engaged in a pattern of criminal gang activity, and who
6 willfully promotes, furthers, or assists in any felonious criminal
7 conduct by members of that gang, shall be punished by
8 imprisonment in a county jail for a period not to exceed one year,
9 or by imprisonment in the state prison for 16 months, or two or
10 three years.

11 (b) (1) Except as provided in paragraphs (4) and (5), any
12 person who is convicted of a felony committed for the benefit of,
13 at the direction of, or in association with any criminal street gang,
14 with the specific intent to promote, further, or assist in any
15 criminal conduct by gang members, shall, upon conviction of that
16 felony, in addition and consecutive to the punishment prescribed
17 for the felony or attempted felony of which he or she has been
18 convicted, be punished as follows:

19 (A) Except as provided in subparagraphs (B) and (C), the
20 person shall be punished by an additional term of two, three, or
21 four years at the court's discretion.

22 (B) If the felony is a serious felony, as defined in subdivision
23 (c) of Section 1192.7, the person shall be punished by an
24 additional term of five years.

25 (C) If the felony is a violent felony, as defined in subdivision
26 (c) of Section 667.5, the person shall be punished by an
27 additional term of 10 years.

28 (2) If the underlying felony described in paragraph (1) is
29 committed on the grounds of, or within 1,000 feet of, a public or
30 private elementary, vocational, junior high, or high school,
31 during hours in which the facility is open for classes or
32 school-related programs or when minors are using the facility

1 that fact shall be a circumstance in aggravation of the crime in
2 imposing a term under paragraph (1).

3 (3) The court shall order the imposition of the middle term of
4 the sentence enhancement, unless there are circumstances in
5 aggravation or mitigation. The court shall state the reasons for its
6 choice of sentencing enhancements on the record at the time of
7 the sentencing.

8 (4) Any person who is convicted of a felony enumerated in
9 this paragraph committed for the benefit of, at the direction of, or
10 in association with any criminal street gang, with the specific
11 intent to promote, further, or assist in any criminal conduct by
12 gang members, shall, upon conviction of that felony, be
13 sentenced to an indeterminate term of life imprisonment with a
14 minimum term of the indeterminate sentence calculated as the
15 greater of:

16 (A) The term determined by the court pursuant to Section
17 1170 for the underlying conviction, including any enhancement
18 applicable under Chapter 4.5 (commencing with Section 1170) of
19 Title 7 of Part 2, or any period prescribed by Section 3046, if the
20 felony is any of the offenses enumerated in subparagraphs (B) or
21 (C) of this paragraph.

22 (B) Imprisonment in the state prison for 15 years, if the felony
23 is a home invasion robbery, in violation of subparagraph (A) of
24 paragraph (1) of subdivision (a) of Section 213; carjacking, as
25 defined in Section 215; a felony violation of Section 246; or a
26 violation of Section 12022.55.

27 (C) Imprisonment in the state prison for seven years, if the
28 felony is extortion, as defined in Section 519; or threats to
29 victims and witnesses, as defined in Section 136.1.

30 (5) Except as provided in paragraph (4), any person who
31 violates this subdivision in the commission of a felony
32 punishable by imprisonment in the state prison for life, shall not
33 be paroled until a minimum of 15 calendar years have been
34 served.

35 (c) If the court grants probation or suspends the execution of
36 sentence imposed upon the defendant for a violation of
37 subdivision (a), or in cases involving a true finding of the
38 enhancement enumerated in subdivision (b), the court shall
39 require that the defendant serve a minimum of 180 days in a
40 county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, “pattern of criminal gang activity” means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

- 1 (8) The intimidation of witnesses and victims, as defined in
2 Section 136.1.
- 3 (9) Grand theft, as defined in subdivision (a) or (c) of Section
4 487.
- 5 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 6 (11) Burglary, as defined in Section 459.
- 7 (12) Rape, as defined in Section 261.
- 8 (13) Looting, as defined in Section 463.
- 9 (14) Money laundering, as defined in Section 186.10.
- 10 (15) Kidnapping, as defined in Section 207.
- 11 (16) Mayhem, as defined in Section 203.
- 12 (17) Aggravated mayhem, as defined in Section 205.
- 13 (18) Torture, as defined in Section 206.
- 14 (19) Felony extortion, as defined in Sections 518 and 520.
- 15 (20) Felony vandalism, as defined in paragraph (1) of
16 subdivision (b) of Section 594.
- 17 (21) Carjacking, as defined in Section 215.
- 18 (22) The sale, delivery, or transfer of a firearm, as defined in
19 Section 12072.
- 20 (23) Possession of a pistol, revolver, or other firearm capable
21 of being concealed upon the person in violation of paragraph (1)
22 of subdivision (a) of Section 12101.
- 23 (24) Threats to commit crimes resulting in death or great
24 bodily injury, as defined in Section 422.
- 25 (25) Theft and unlawful taking or driving of a vehicle, as
26 defined in Section 10851 of the Vehicle Code.
- 27 (26) *Theft of access cards or account information, as defined*
28 *in Section 484e.*
- 29 (27) *Counterfeiting, designing, using, attempting to use an*
30 *access card, as defined in Section 484f.*
- 31 (28) *Fraudulent use of an access card or account information,*
32 *as defined in Section 484g.*
- 33 (29) *Wrongfully obtaining Department of Motor Vehicles*
34 *documentation, as defined in Section 529.7.*
- 35 (30) *Unauthorized use of personal identifying information to*
36 *obtain credit, goods, services, or medical information in the*
37 *name of another, as defined in Section 530.5.*
- 38 (f) As used in this chapter, “criminal street gang” means any
39 ongoing organization, association, or group of three or more
40 persons, whether formal or informal, having as one of its primary

1 activities the commission of one or more of the criminal acts
2 enumerated in paragraphs (1) to (25), inclusive, of subdivision
3 (e), having a common name or common identifying sign or
4 symbol, and whose members individually or collectively engage
5 in or have engaged in a pattern of criminal gang activity.

6 (g) Notwithstanding any other law, the court may strike the
7 additional punishment for the enhancements provided in this
8 section or refuse to impose the minimum jail sentence for
9 misdemeanors in an unusual case where the interests of justice
10 would best be served, if the court specifies on the record and
11 enters into the minutes the circumstances indicating that the
12 interests of justice would best be served by that disposition.

13 (h) Notwithstanding any other provision of law, for each
14 person committed to the Youth Authority for a conviction
15 pursuant to subdivision (a) or (b) of this section, the offense shall
16 be deemed one for which the state shall pay the rate of 100
17 percent of the per capita institutional cost of the Department of
18 Youth Authority, pursuant to Section 912.5 of the Welfare and
19 Institutions Code.

20 (i) In order to secure a conviction, or sustain a juvenile
21 petition, pursuant to subdivision (a), it is not necessary for the
22 prosecution to prove that the person devotes all, or a substantial
23 part of his or her time or efforts to the criminal street gang, nor is
24 it necessary to prove that the person is a member of the criminal
25 street gang. Active participation in the criminal street gang is all
26 that is required.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the
32 penalty for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition of a
34 crime within the meaning of Section 6 of Article XIII B of the
35 California Constitution.